

MEMORANDUM

October 4, 2012

TO: Planning, Housing, and Economic Development Committee

FROM: Jeff Zyontz, Legislative Attorney *JZ*
Linda McMillan, Senior Legislative Analyst *LM*

SUBJECT: Zoning Text Amendment 12-11, Accessory Apartments – Amendments

Zoning Text Amendment (ZTA) 12-11, sponsored by the District Council at the request of the Planning Board, was introduced on July 24, 2012. The ZTA would allow accessory apartments under certain conditions without a special exception.¹

The Council conducted a public hearing on September 11, 2012. There was extensive testimony, some in support and some in opposition. Some testimony recommended specific changes. There were requests for specific information.

This packet concerns background information on current law, facts on current accessory apartments, information on current enforcement by DHCA, and the purpose of ZTA 12-11. The Director of DHCA will attend the October 8 PHED meeting.

This memorandum has 6 major sections:

- I Current Law
- II Accessory Apartment Facts
- III Public Notice and Participation
- IV Special Exception Procedure
- V Parking
- VI DHCA Enforcement
- VII The Purpose of ZTA 12-11

¹ Testimony indicated that, under ZTA 12-11, accessory apartments would be allowed “as of right”. To the extent that a special exception would not be required, that is correct; however, a landowner must satisfy numerous conditions in order to have an accessory apartment.

I Current Law

Zoning requirements vary by zone within every jurisdiction. In any one County, accessory apartments may be permitted with conditions without a special exception, permitted with a special exception, or prohibited. The following table characterizes jurisdictions by their least restrictive zone with regard to accessory apartments. Thereafter, a more detailed description follows.

	Allowed without a special exception	Allowed with a special exception	Prohibited
Arlington County	X		
Baltimore County	X only for family member		
Fairfax County		X	
Howard County	X for large lots	X for small lots	
Washington DC	X for small lots	X for large lots	
Prince George's County			X
Calvert County	X		
City of Rockville		X	
City of Gaithersburg	X on a large lot in a pre-existing structure		

A) Other Counties (this section uses some material provided by Planning Staff)

1) Arlington County

The county just completed the process of making “accessory dwellings” a by-right use over strong community opposition (a petition was signed by over 400 people and over 50 public meetings were held). The county will allow only 28 accessory dwellings per year. Main highlights of the code are:

- only interior accessory dwellings and only in single-family detached houses;
- owner must reside in building;
- there will be annual inspections by Code Enforcement staff & in response to complaints;
- maximum occupancy of two people;
- a parking survey is initiated by the application. If the block is more than 65% parked, there must be at least one off-street parking space (of standard size);
- the public is notified through updating the county's real estate database;
- home occupations are permitted in the accessory dwelling, but no employees on the premises except in the case of assisting a person with disabilities who resides in the accessory dwelling.

2) Baltimore County

An accessory apartment is permitted as a temporary use within a principal single-family detached dwelling or within an accessory building situated on the same owner-occupied lot as the principal dwelling in any zone that permits single-family dwellings. The approval of an application requires the accessory apartment to only be utilized by immediate family and may not be used by any person other than an immediate family member for any other reason. If located within an existing single-family detached dwelling:

- the size of the accessory apartment may not exceed 1/3 of the overall floor area of the dwelling or 2,000 square feet, whichever is less;

- any and all improvements to be dedicated as an accessory apartment must be used solely as a single-family residence; and
- the accessory apartment may not have separate utility meters.

If located within an accessory building on the same owner-occupied property as the principal single-family detached dwelling:

- an applicant shall file a request for a special hearing and a use permit with the Planning Department, and a public hearing before the Office of Administrative Hearings is required;
- the size of the accessory apartment may not exceed 1,200 square feet;
- following a public hearing, the Office of Administrative Hearings may grant a request upon a finding that the size, location, and purpose of the accessory apartment conform with the special exception standards; and
- the accessory apartment may not have separate utility meters or water and sewerage services unless approved by the Office of Administrative hearings, based on specific findings of necessity for the accessory building.

3) *Fairfax County*

The Board of Zoning Appeals (BZA) may approve a special permit for the establishment of an accessory dwelling unit (for a single-family detached unit). The BZA determines that the proposed accessory apartment, together with any other accessory apartments within the neighborhood, won't constitute sufficient change to modify/disrupt the predominant character of the neighborhood. Permits are only good for five years.

- Parking: BZA reviews the parking situation to determine if parking is sufficient. If not, the Board will require some off-street parking for the accessory dwelling unit.
- The unit cannot have more than two bedrooms or two persons.
- The unit is limited to 35 percent of gross floor area of the principal dwelling unit.

4) *Howard County*

Accessory apartments are a conditional use in single-family detached zones on lots less than 12,000 square feet.

- Except for an exterior entrance and necessary parking area, there shall be no external evidence of the accessory apartment.
- The accessory apartment shall have no more than two bedrooms.

Accessory apartments are a permitted use in single-family detached zones on lots of 12,000 square feet or larger.

In dwellings with a net floor area of 2,000 square feet or less, the accessory apartment is limited to 40 percent of the net floor area of the building. For larger dwellings, the apartment is limited to one-third of the net floor area, up to a maximum of 1,500 square feet.

The minimum off-street parking requirement for an accessory apartment is one (1) space per apartment.

5) *Washington, DC*

Accessory apartments may be added within an existing one-family detached dwelling in some zones. It is allowed as of right in a semidetached zone. In single-family detached zones, there is a requirement to appear before the Board of Zoning Adjustment to seek permission through the special exception process. The current zoning regulations allow for a homeowner to provide a small apartment in an accessory building (garage or carriage house), but only if it is sleeping or living quarters of domestic employees and only if it is located in an R-1 zone.

- No more than 25% of the gross floor area of the house may be used.
- The house must have at least 2,000 square feet of GFA, exclusive of the garage.
- Floor area to the house must not be added and use of the garage for the accessory apartment is prohibited.
- A home occupation is prohibited if an accessory apartment is allowed.
- If an additional entrance to the house is created, it must not be located on a wall of the house that faces a street.
- Either the principal dwelling or the accessory apartment unit must be owner-occupied.
- The maximum number of persons that may occupy the house, including the principal dwelling and the accessory apartment combined, is 6.
- The lots must have a minimum lot area for the following zones:
 - 7,500 SF for R-1-A;
 - 5,000 SF for R-1-B; and
 - 4,000 SF for R-2 and R-3.

6) *Prince George's County*

Prince George's County does not allow accessory apartments. Only one dwelling unit is allowed in residential zones.

7) *Calvert County*

Accessory Apartments, sometimes referred to as "In-Law Apartments" or "Granny Flats", are permitted in most zones, subject to the following conditions:

- Only one accessory apartment shall be created on each single-family lot.
- The accessory apartment must be clearly subordinate to the single-family dwelling.
- If the apartment is not a part of the dwelling, it must be within 100 feet of the dwelling. In no case shall it contain more than 900 square feet gross floor area of enclosed space, including enclosed porches.
- If the apartment is contained within the dwelling (i.e., as an addition or wing), then it must be less than 40 percent of the total square footage of the building.
- If the apartment is located in the basement of the dwelling, then it can consist of the entire basement.
- An owner of the lot shall occupy at least one of the dwelling units on the premises.
- At least two off-street parking spaces must be available for each unit.

B) *Montgomery County*

1) *Current Montgomery County law – Residential uses*

<i>Accessory apartments</i>	Allowed by special exception
<i>Number of people per dwelling unit</i>	No maximum for families other than housing code limits ² Unrelated individuals limited to 5 (but may rent 1 or 2 rooms to 2 additional individuals) Group home, licensed – maximum 8 (more by special exception)
<i>Rental</i>	May rent the entire house to one household May rent 1 or 2 bedrooms in a house to individuals; or May rent the accessory apartment to a household
<i>Guest house</i>	Allowed as a permitted use for transient guests but may not be rented (a DPS interpretation would allow the principal house to be rented and a guest house may be built for the transient owner; this is the subject of ZTA 12-15)
<i>Registered living unit</i>	Allowed by registration – up to 3 related individuals except that one may be an unrelated caregiver; or, up to two people when one is an employee of the household owner.

2) *ZTA 04-10 – proposed by Executive and allowed to lapse*

The proposed ZTA in 2004 would have allowed small accessory apartments (800 square feet or less) as of right but required the Department of Housing and Community Development to issue a license. A license could not be issued if the new license would cause the number of accessory apartments in a neighborhood to exceed 15 percent.

3) *March 2008 Affordable Housing Task Force*

Recommendation: Permit accessory apartments without requiring a special exception permit.

Accessory apartments provide for a secondary, more affordable housing unit in a single-family home. Applications for accessory apartments, however, must be approved as a special exception to the zoning ordinance, an expensive and time consuming process. The County should adopt legislation and zoning text amendments that:

- Create standards which are not overly restrictive, for approving accessory apartments that relate to proximity to transit, occupancy, parking, accessory unit access, and other appropriate factors.
- Make accessory apartment a by-right use in appropriate single-family zones.

² The average single-family detached house in the County is 2,600 square feet. Under the housing code (§26-5), the average single-family house could legally be the home for approximately 15 people who are related by blood or marriage. (The 15 person estimate assuming 1,550 square feet of the house is “habitable space”; habitable space excludes any bathroom, laundry, pantry, foyer or communicating corridor, closet, recreation room, private workshop or hobby room, storage space, fallout or emergency shelter and any area with less than 5 feet of headroom. The bedrooms must contain at least 120 square feet for the first 2 people and 50 square feet for each person above 2. In addition, every dwelling unit must contain at least 150 square feet of floor area for the first occupant and at least 100 additional square feet of floor area for every additional occupant.)

Desired Results

- An increase in the number of approved accessory apartments and the increase of affordable housing opportunities in the County.
- A less costly and time consuming approval process.

Implementation

Adopt Zoning Text Amendments allowing accessory apartments by right in locations in proximity to transit and in conformance with certain adopted standards. Encourage more aggressive enforcement of housing codes related to accessory apartments.

4) *Limits of Zoning Authority*

a) Municipalities

County zoning law does not apply to Brookeville, Gaithersburg, Garrett Park, Laytonsville, Poolesville, Rockville, or Washington Grove. County zoning does apply to Chevy Chase Village, Chevy Chase View, the Town of Chevy Chase, Chevy Chase Section 5, Kensington, Martin's Addition, Somerset, and Takoma Park. All municipalities covered by the County Zoning Ordinance may regulate parking in one-family residential zones more strictly than the County.³

Although Kensington and Takoma Park use the County's zoning, a resolution by either of those jurisdictions can require a supermajority of the Council to approve a zoning action contrary to their recommendation.⁴ The Council has not received a resolution from either municipality.⁵

b) Covenants

Zoning is not the only land use control. Many areas of the County have private covenants that may restrict the use of land more strictly than zoning. These include covenants for homeowners associations. If covenants prohibit accessory apartments, the apartments are prohibited without regard to what zoning allows. Many areas of the County are governed by homeowners associations. The largest single association in the County is Montgomery Village. There is no provision prohibiting accessory apartments in Montgomery Village.

³ Article 28 §8-115.1(b)(2). Municipalities covered by County zoning may regulate fences, walls, signs, parking, storage, and the location of structures.

⁴ Article 28 §8-112.2. City of Takoma Park and Town of Kensington

(a) Concurrent jurisdiction to enforce zoning ordinances. -- The City of Takoma Park and the Town of Kensington shall each have concurrent jurisdiction to enforce the Montgomery County zoning ordinances within their respective corporate limits.

(b) Two-thirds vote to overturn zoning resolution. -- A two-thirds majority vote of both the planning board and the district council of Montgomery County are required to take any action relating to zoning within the City of Takoma Park or the Town of Kensington that is contrary to a resolution of the Mayor and City or Town Council.

⁵ The City of Takoma Park submitted a survey of accessory apartment owners, who expressed satisfaction with the program principally due to the additional income provided by rented apartments.

5) *Current accessory apartment requirements*

<i>Limit per one-family dwelling lot</i>	a dwelling that must be at least 5 years old
<i>Part of the pre-existing principal dwelling</i>	allowed if the lot is less than 1 acre
<i>Additions to existing structure</i>	allowed if the lot is more than 1 acre
<i>Separate structure</i>	allowed if the lot is 2 acres or more
<i>Occupancy of principal house</i>	resident owner and family required – no room rentals
<i>Registered living units</i>	prohibited when an accessory apartment is approved
<i>External attributes</i>	must have a separate entrance but must maintain a single-family appearance
<i>Development standards</i>	zoning classification control
<i>Excessive concentration</i>	prohibited but determined on a case-by-case basis
<i>Parking</i>	2 off-street spaces are required, but the requirement may be waived or increased depending upon the availability of on-street parking

II **Accessory Apartment Facts**

Most recent history

There are 413 licensed accessory apartments for rent in Montgomery County. In the past 12 months, there were 22 applications. The typical length of time to get an accessory apartment in the past 5 years was 7 months. The longest time has been about 1 year.

Average cost of getting an accessory apartment:

Filing fee	\$295
Sign fee	\$220 (\$110 returned when the sign is returned)
DPS Annual Administration Fee	\$112
DHCD Annual renters' license	\$ 38
Total first year out of pocket	\$645

Attorneys rarely appear for special exception accessory apartment applications. Of the 22 applications last year, only one applicant used an attorney. That applicant also needed a variance.

Past five years

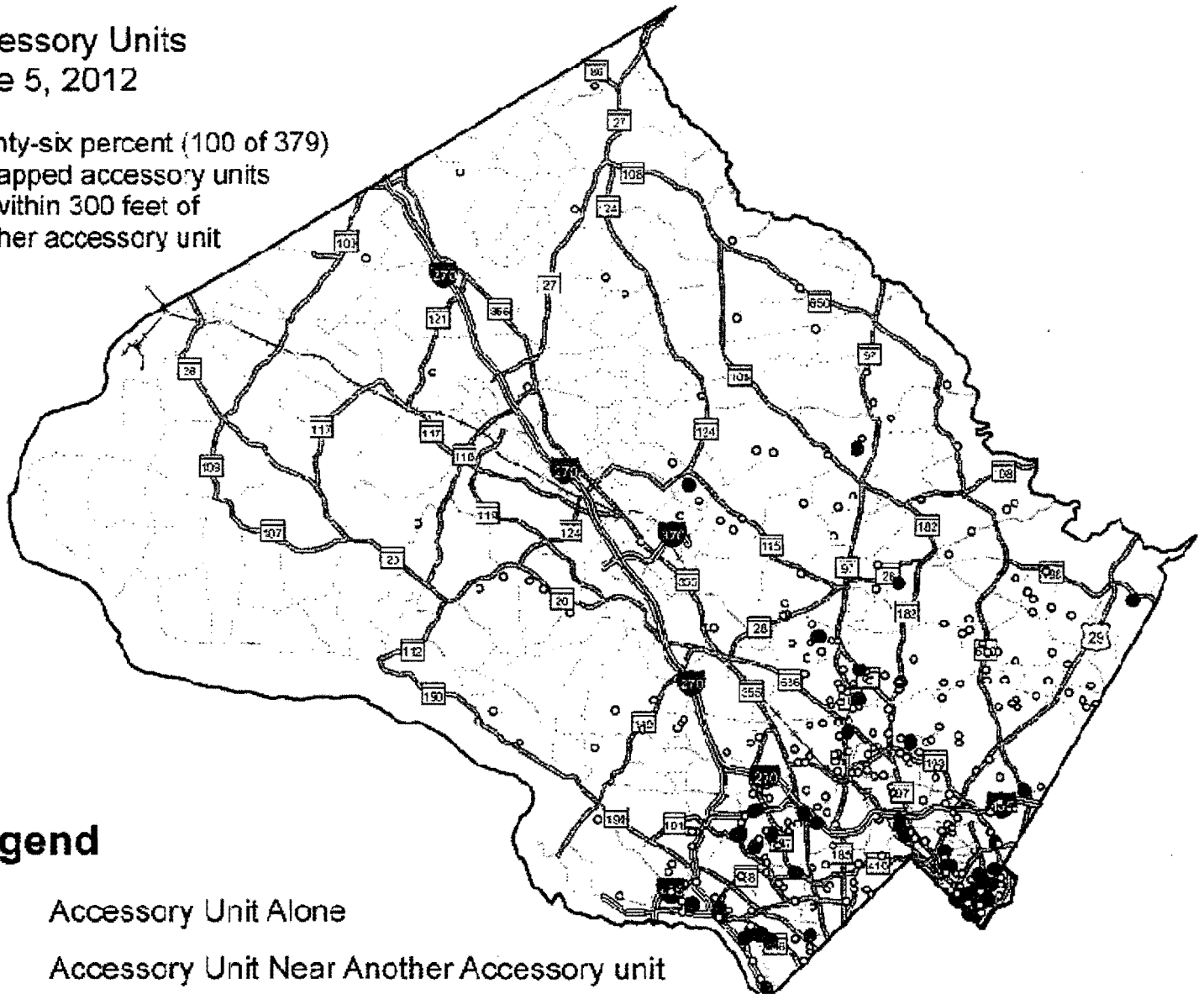
Eight-five applications were filed between January 1, 2007 and September 20, 2012. Fifty-one applications were granted; four were denied; eleven were dismissed or withdrawn; two continued mid-process; seventeen were filed recently enough that there has not yet been a decision—the last decision was August 3, 2012.

	Cases filed since January 1, 2007
<i># of filed accessory apartments</i>	85
<i># decided by BOA</i>	55
<i># approved by BOA</i>	51
<i># denied by BOA</i>	4 (7% of decided cases)
<i># withdrawn or continued</i>	13
<i># still pending BOA decision</i>	17

Accessory Units

June 5, 2012

Twenty-six percent (100 of 379) of mapped accessory units are within 300 feet of another accessory unit



Legend

- Accessory Unit Alone
- Accessory Unit Near Another Accessory unit

III Public Notice and Participation

Special exception applications require 2 types of notice to the public. A sign on the property is required to be erected within 3 days of filing the application.⁶ Notice of the filing must be sent to adjoining neighbors, confronting neighbors, any municipality or special taxing district, and local citizens associations that include the subject property.⁷ Each notice must contain the type of special exception being sought, the name of the applicant, contact information for the applicant and the Board of Appeals and business hours of the Board, and, if known, the date, time and place fixed for the hearing. Each notice must inform the recipient that the Board will mail the recipient upon request a copy of the Board's rules of procedure. Each notice must also:

- (1) state that a copy of the applicant's complete submission is available for inspection at the Board's office and may be borrowed for copying;
- (2) inform the recipient of the requirements for prehearing statements for groups or organizations desiring to appear in opposition;
- (3) inform the recipient how to get a complete copy of the Zoning Ordinance.⁸

Of the 55 accessory apartment cases decided (actually granted or denied) since January 1, 2007, 24 had public participation (either by mail or appearance at the public hearing). In 17 of those cases (30 percent of the cases decided by the Board), the Hearing Examiner proposed and the Board adopted conditions of approval to address the concerns raised by testimony. In 5 of the cases, the public's concerns did not affect the outcome. In 2 cases, one of which was denied, the effect of the public's participation on the outcome could not be determined.

IV Special Exception Application Procedure

The process for a special exception generally starts with a trip to the office of the Board of Appeals for the necessary application forms. The staff will advise the applicant how to complete the application, what fees apply, and what documents are needed to file.

The Board requires one original and 7 copies of all documents. For a small fee, the applicant may make copies on the Board's copying machine. The applicant must submit the following documents and information:

- An accurate site plan, showing boundaries, dimensions, area, topography and frontage of the property involved, as well as the location and dimensions of all structures existing and proposed to be erected, and the distances of such structures from the nearest property lines.
- Plans, architectural drawings, photographs, elevations, specifications or other detailed information depicting fully the exterior appearance of existing and proposed construction, including signs, involved in the petition; include a floor plan of the accessory apartment, drawn to scale.
- Statement explaining in detail how the special exception is proposed to be operated and any special conditions or limitations which the applicant proposes for adoption by the Board.
- Complete information concerning the size, type and location of any existing and proposed trees, landscaping and screening and any exterior illumination proposed.
- An original, certified copy of the official zoning vicinity map including 1,000 foot radius surrounding the subject property and other information to indicate the general conditions of use and existing improvements on adjoining and confronting properties.

⁶ §59-A-4.43(a).

⁷ §59-A-4.46(a).

⁸ §59-A-4.46(b).

- If petitioner is not the owner of the property involved, lease, rental agreement, or contract to purchase by which petitioner's legal right to prosecute the petition is established.
- Applicable master plan maps reflecting proposed land use, zoning, and transportation, together with any other portions of the applicable master plan deemed pertinent by the petitioner.
- A preliminary forest conservation plan and an approved natural resources inventory that satisfies the technical manual adopted by the Planning Board or a statement signed by M-NCPPC Environmental Planning Staff and attesting that the property is less than 40,000 square feet in area, no forest or individual trees will be disturbed, the property is not subject to a previously approved Forest Conservation Plan, and the special exception proposal will not impact any Champion tree.
- Other natural features, such as rock outcroppings and scenic views.
- Historic buildings and structures.
- A preliminary and/or final water quality plan if the property lies in a special protection area subject to the provisions of Chapter 19 of the Code.
- All additional exhibits which the petitioner intends to introduce.
- Summary of what the petitioner intends to prove, including the names of petitioner's witnesses, summaries of the testimonies of expert witnesses, and the estimated time required for presentation of the petitioner's case.
- A listing of the names and mailing addresses of the adjoining and confronting property owners who are entitled to notice of the filing. Also, a listing is required of any local citizens associations and any municipality or special taxing district within which the property is located.

Once filed, the application is sent to Planning Staff and notice is sent as required. A special exception for an accessory apartment is not reviewed by the Planning Board. A public hearing date is established with the Hearing Examiner. Currently, that date is at least 4 and one-half months from the date of the application. (That will change to 3 and one-half months under the streamlining process.) The Planning Staff report is submitted to the Hearing Examiner and the applicant at least 5 days before the public hearing. Generally, public hearings on accessory apartments take a few hours.

Within 30 days of the close of record, the Hearing Examiner must issue a report and recommendation to the Board of Appeals. (The Hearing Examiner makes the final decision on special exceptions for boardinghouses, home occupations, non-commercial riding stables, temporary structures, farm tenant mobile homes, and day-care centers for up to 30 children. Special exceptions for accessory apartments are decided by the Board of Appeals.) Within 10 days from the issuance of the report, an aggrieved party may request oral argument before the Board of Appeals. The decision of the Board of Appeals must be made 30 days within 30 days of the Hearing Examiner's report. The opinion of the Board is written after their decision.

V Parking

Two off-street parking spaces are currently required for any accessory apartment, unless the Board of Appeals finds that there is adequate on-street parking. ZTA 12-11 would require one parking space in addition to the parking required for the principal dwelling. The number of off-street spaces required varies with the date the house was constructed. Houses built before 1955 are not required to have any off-street parking. A house built between 1955 and 1958 was required to have one off-street space. Houses built after 1958 were required to have 2 off-street parking spaces. Most of the public participation in accessory apartment applications was due to an alleged lack of parking in the neighborhood.

Many houses built before 1955 do not have driveways. Adding an off-street parking space would reduce the availability of on-street parking. Driveways are generally 10 feet wide. Parking for the general public is prohibited 5 feet on either side of the driveway for a total width of 20 feet.⁹ The typical on-street parking space is 20 feet long. In order to add to total parking availability, a new driveway must at least accommodate 2 vehicles.

Two provisions in ZTA 12-11 might reduce parking problems: 1) the maximum number of people living in the accessory apartment would be three; 2) more than one accessory apartment every 300 feet in smaller lot zones on the same street frontage would be prohibited.

Takoma Park conducted a survey of accessory apartment property owners. Twenty of the 33 accessory apartment owners responded to that survey. Of those who responded, the average occupancy in an accessory apartment was 1.3 people.

Alexandria and Fairfax County do not require any off-street parking for accessory apartments unless on-street parking is found to be inadequate. Parking is determined to be inadequate by conducting a parking survey on the immediate street. In Alexandria, if more than 65 percent of street parking is in use, an accessory apartment in Alexandria must provide 1 off-street space.

VI DHCA Enforcement

Several of those testifying at the public hearing raised concerns about illegal accessory apartments and overcrowding of single-family homes. While the proposed ZTA changes the requirements for a legal accessory apartment, it does not change the enforcement process or reduce the number of illegal accessory apartments unless one assumes that a homeowner who does not have a special exception for an existing accessory apartment would meet all the new requirements and seek a license for that same apartment.

Complaints regarding illegal accessory apartments generally come to the County as either a complaint about overcrowding or a complaint that there is an illegal accessory apartment. If the complaint is specific to zoning requirements, then the Department of Permitting Services (DPS) is the enforcing agency. If the complaint is specific to housing and building maintenance standards, then the Department of Housing and Community Affairs (DHCA) is the enforcing agency. The responding department will notify the other if they see potential violations. For example, if DHCA responds to a complaint about overcrowding and does not find evidence of insufficient space but suspects that there are more than 5 unrelated people living together, they will report this to DPS for enforcement. DPS and DHCA are in on-going discussions on how to enhance coordination and cross-training of inspectors.

DHCA has enforcement in the following areas included in Chapter 26 that could come into question in a complaint about an illegal accessory apartment or overcrowding:

- Floor area for the dwelling unit
- Floor area for sleeping quarters
- Ceiling height
- Use of cellar or basement for living space
- Basic equipment and facilities (electric, water, kitchen, bathroom, etc.)

⁹ Montgomery Code §31-19. Obstructing entrances to public or private driveways.

The parking of vehicles at any time on the public ways of the county in such a manner that any part of the vehicle so parked is within five (5) feet of either curb edge of any existing opening or hereafter established entrance to any public or private driveways or shall overlap or obstruct any existing opening or hereafter established entrance to any public or private driveways is prohibited; except, that an owner may obstruct his own private residence driveway.

- Light, ventilation, and heat
- Fire safety and security
- Maintenance (interior and exterior) of a dwelling unit

Chapter 26-11 provides that DHCA may inspect the condition of any dwelling to safeguard the health and safety of the occupants and the public. If the owner denies DHCA entry for an inspection, DHCA may seek an administrative warrant from the District or Circuit Court. The judge may issue a warrant if the judge finds that:

- DHCA is authorized or required by law to make the inspection;
- DHCA has demonstrated that the inspection is needed because there is evidence of an existing violation or there is a general and neutral plan to conduct fire inspections or an inspection is a condition of a rental property license;
- DHCA has been denied access after making a reasonable effort to gain access;
- The inspection is sought for health, safety, and general welfare related purposes.

DHCA will discuss with the PHED Committee the circumstances under which they would seek a warrant for an inspection as follow-up to an overcrowding complaint.

Number of Complaints

The table below provides data on complaints received by both DHCA and DPS from FY04 through FY11 (a table showing details for DHCA and DPS is attached at © 1). Complaints about overcrowding are a small percentage of all the complaints received. The number of overcrowding complaints received by DHCA and DPS grew from FY04 through FY08 but has leveled off since then. In most cases, the overcrowding complaints were determined to be unfounded. In most years, six or fewer citations were issued. However, in FY08, DHCA issued 27 citations. Citations are issued if the violation is not corrected.

Overcrowding Complaints – DHCA and DPS Combined

	FY04	FY05	FY06	FY07	FY08	FY09	FY10	FY11
Received	236	268	347	582	718	588	594	595
Unfounded	213	244	339	546	663	528	481	552
Citations	3	4	3	7	29	6	6	2

How often are Inspections Required?

Registered Living Unit – A registered living unit is inspected by the Department of Permitting Services for compliance with building standards (for new construction) and the Department of Housing and Community Affairs for compliance with housing standards when it is first completed. The homeowner files an affidavit of compliance with the Department of Housing and Community Affairs. Because no rent can be charged to the person or people living in the RLU, no rental license is required. COMCOR 59.00.02 provides that (1) each RLU will be inspected annually and at other times as may be appropriate; (2) the owner must permit DHCA inspector(s) to enter and inspect the RLU at reasonable times during business hours or by appointment; (3) the inspector(s) are permitted to interview all occupants of the dwelling units present at an inspection. When an RLU is discontinued, DHCA may inspect for compliance (including the removal of the cooking facility). DHCA may inspect when occupancy of an RLU changes.

Accessory Apartment – After receiving approval for a special exception, an accessory apartment is inspected by the Department of Permitting Services for compliance with building standards (for new

construction) and the Department of Housing and Community Affairs for compliance with housing standards when it is first completed. The homeowner must apply for and receive a rental license for an accessory apartment from DHCA. An annual license is required. A rental license does not require an annual inspection; however, currently an annual inspection is required as a part of the special exception. The law does allow the Board and the Department to agree on more or less frequent inspections.¹⁰

Some testifying at the public hearing questioned whether DPS and DHCA have sufficient staff to carry out inspections required in law and regulation, with one person saying that it took DHCA one month to respond to an overcrowding complaint. DHCA can discuss with the Committee its ability to comply with current requirements, as well as the potential impact if additional inspections are established.

VII The Purpose of ZTA 12-11

Accessory apartments allow owners with a house too large for their own use or their own income to satisfy a housing need. Accessory apartments tend to be far more affordable than new housing stock. It is a response to larger houses, smaller household size, smaller incomes, and aging owners. These factors led the County to allow accessory apartments by special exception since 1984.

Civic Associations asked why was ZTA 12-11 was being proposed to allow accessory apartments if they satisfy a number of conditions. Planning Staff described its purpose as follows:

Currently, an accessory apartment can only be granted through approval of a special exception by the Board of Appeals. The approval process is designed to address concerns pertaining to maintaining neighborhood quality through exterior appearance, providing adequate parking and protecting against the overconcentration of accessory units in any one area.

Current regulations that require a special exception for approval can be expensive and/or time consuming. As such, only an average of ten accessory apartments is approved annually. According to staff from the Board of Appeals, the Planning Department, and the Department of Housing and Community Affairs, almost all applications are approved. The few that are not approved are turned down because the existing house on the property already does not meet a zoning setback requirement (which is unrelated to the accessory apartment application) or the proposed accessory apartment does not have an adequate exit location from the unit in case of an emergency.

The Zoning Text Amendment proposes to provide opportunities to permit accessory apartments by right in certain zones based on the size of the unit and/or whether the unit is attached or detached from the principal one-family detached house. The ZTA establishes certain standards and requirements drafted from existing, objective standards by which a special exception use is granted for an accessory apartment. In addition, the maximum number of occupants is restricted for both the small and large accessory units. Last, a spacing requirement has been added to the use standards to limit the number of accessory units, regardless of size, that can be constructed within a neighborhood. The proposed text amendment attempts to address community impact concerns while in some cases reducing

¹⁰ Sec. 59-G-1.3. Compliance with special exception grant.

(a) Inspection of operations. The Department, in conjunction with the Board, must establish a regular inspection program for special exception uses. All special exception uses must be inspected annually; except that the Board and the Department may specifically agree that a particular special exception use or category of uses requires a more frequent or less frequent schedule of inspections. The Department must inspect all special exceptions as scheduled in the inspection program.

the process time and expense required to provide one particular type of affordable dwelling unit in the County.¹¹

In its most recent memorandum to the Planning Board, Planning Staff added the following:

The current number of accessory apartments is surprisingly low. This may well be attributed to the fact that the process to obtain approval of an accessory apartment is relatively onerous. Since it is exceptionally rare for a request for an accessory apartment to be denied, there does not appear to be much benefit to the current process, particularly if steps are taken to insure that by right accessory units have to meet certain requirements and standards before they can be permitted. The legislation that is proposed goes further than the current law to ensure that there will not be an over concentration of accessory apartments in any neighborhood and limits the total number of accessory units in the county to 2000. Staff is confident that these additional precautions ensure that allowing by right accessory units will not result in any significant impact to the character of the county's residential neighborhoods.¹²

ZTA 12-11 can be viewed by clicking on the following link:

http://www6.montgomerycountymd.gov/content/council/pdf/zta/2012/zta_12-11.pdf.

¹¹ Planning Staff memorandum to the Planning Board, April 26, 2012.

¹² Planning Staff memorandum to the Planning Board, August 30, 2012.

Housing Code Violations								
Housing and Community Affairs	FY04	FY05	FY06	FY07	FY08	FY09	FY10	FY11
Total Number of Complaints Received	6,575	5,955	7,458	6,812	6,779	6,123	7,288	7,246
Number of Overcrowding Complaints Received	193	225	277	492	655	516	523	525
Overcrowding Complaints as a Percent of Total Complaints	2.9%	3.8%	3.7%	7.2%	9.7%	8.4%	7.2%	7.2%
Number of Complaints regarding an illegal Accessory Apartment	66	71	92	123	162	114	117	155
Total Number of Unfounded Overcrowding Compliants	177	207	268	466	616	474	419	488
Notices of Violation Issued - Overcrowding	16	18	9	26	39	42	55	37
Violations Corrected - Overcrowding	16	18	9	26	39	42	37	35
Citations Issued - Overcrowding	3	3	3	6	27	5	6	2
Permitting Services	FY04	FY05	FY06	FY07	FY08	FY09	FY10	FY11
Total Number of Complaints Received	2,698	3,070	3,322	3,730	4,043	4,130	4,377	4,418
Number of Overcrowding Complaints Received	43	43	70	90	63	72	71	70
Overcrowding Complaints as a Percent of Total Complaints	1.6%	1.4%	2.1%	2.4%	1.6%	1.7%	1.6%	1.6%
Number of Complaints regarding an illegal Accessory Apartment							9	6
Total Number of Unfounded Overcrowding Compliants	36	37	62	80	47	54	62	64
Notices of Violation Issued - Overcrowding	7	6	8	10	16	18	3	5
Violations Corrected - Overcrowding	7	6	8	10	16	18	3	5
Citations Issued - Overcrowding	0	1	0	1	2	1	0	0